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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 HENRY HOLMES,

10 Plaintiff,

11 v.

12 USAA SAVINGS BANK,

13 Defendant.

Case No.: 2:21-cv-00446-JAD-NJK

**FIRST AMENDED COMPLAINT  
AND DEMAND FOR JURY TRIAL**

1. TCPA, 47 U.S.C. § 227, *et seq.*

Invasion of Privacy - Intrusion upon  
Seclusion

16  
17 **FIRST AMENDED COMPLAINT FOR DAMAGES**

18 Plaintiff Henry Holmes (“Plaintiff”), through his attorneys, alleges the  
19 following against Defendant USAA Savings Bank (“Defendant”):  
20

21 **INTRODUCTION**

22  
23 1. Count I of Plaintiff’s Complaint is based upon the Telephone Consumer  
24 Protection Act (“TCPA”), 47 U.S.C. § 227. The TCPA is a federal statute  
25 that broadly regulates the use of automated telephone equipment. Among  
26 other things, the TCPA prohibits certain unsolicited marketing calls, restricts  
27  
28

1 the use of automatic dialers or prerecorded messages, and delegates  
2 rulemaking authority to the Federal Communications Commission (“FCC”).

- 3
- 4 2. Count II of Plaintiff’s Complaint is based upon the Invasion of Privacy -
- 5 Intrusion upon Seclusion, as derived from § 652B of the Restatement
- 6 (Second) of Torts. Section 652B prohibits an intentional intrusion,
- 7 “physically or otherwise, upon the solitude or seclusion of another or his
- 8 private affairs or concerns ... that would be highly offensive to a reasonable
- 9 person.”
- 10
- 11

12 **JURISDICTION AND VENUE**

- 13 3. Subject matter jurisdiction of the Court arises under 47 U.S.C. § 227, *et seq.*,
- 14 and 28 U.S.C. §§ 1331, 1367.
- 15
- 16 4. Upon information and belief, Defendant’s corporate headquarters are located
- 17 in this District. Venue accordingly is proper pursuant to 28 U.S.C. §
- 18 1391(b)(1) because Defendant resides here. For the same reason, personal
- 19 jurisdiction over Defendant in this District is established as well.
- 20

21 **PARTIES**

- 22
- 23 5. Plaintiff is a natural person residing in the County of Cobb, State of Georgia.
- 24 6. Defendant is a creditor engaged in the business of extending credit through
- 25 credit cards, with its principal place of business located in Las Vegas, Nevada.
- 26
- 27
- 28

1 Defendant can be served with process through its statutory agent, Corporation  
2 Service Company, located at 112 North Curry Street, Carson, Nevada 89703.

3  
4 7. Defendant acted through its agents, employees, officers, members, directors,  
5 heirs, successors, assigns, principals, trustees, sureties, subrogees,  
6 representatives, and insurers.  
7

### 8 **FACTUAL ALLEGATIONS**

9  
10 8. Prior to February 5, 2020, Defendant made several phone calls to Plaintiff in  
11 an attempt to collect on an alleged debt.

12 9. The calls placed by Defendant mainly originated from (800) 531-8722. Upon  
13 information and belief, this telephone number is operated by, or for the  
14 benefit of, Defendant.  
15

16 10. On or about February 5, 2020, Defendant placed another call to Plaintiff on  
17 his cellular phone number ending in 5675, in an attempt to collect the alleged  
18 debt.  
19

20 11. Plaintiff answered the February 5, 2020 collection call from Defendant.

21 12. Plaintiff then spoke with Defendant's representative. During the call,  
22 Defendant informed Plaintiff that it was attempting to collect an alleged debt.  
23

24 13. Plaintiff, in turn, unequivocally revoked consent to be called any further.  
25 Plaintiff explained that he was experiencing legal problems and insisted that  
26 further contacts only be made in writing.  
27  
28

1 14.Despite Plaintiff's unequivocal request not to be contacted via telephone,  
2 Defendant continued to call Plaintiff.

3  
4 15.Between February 11, 2020 and June 30, 2020, Defendant called Plaintiff on  
5 his cell phone approximately one hundred and twenty-five (125) times and  
6 left several voicemails.

7  
8 16.Upon information and belief, each time Defendant called, there was a pause  
9 before the collection agent began to speak, indicating the use of an automated  
10 telephone dialing system.

11  
12 17.Defendant often called Plaintiff multiple times in the same day, indicating the  
13 use of a random number generator to: a) determine the order in which to select  
14 phone numbers to be dialed from a preproduced list; and b) store and dial  
15 those numbers at a later time when Plaintiff did not answer.

16  
17 18.During the time period of Defendant's phone calls (and through the present),  
18 Plaintiff worked at a hospital, where he repairs medical equipment. The calls  
19 from Defendant would often interrupt Plaintiff's work and stress him out  
20 while he attempted to perform his work duties.

21  
22 19.Defendant's calls not only induced stress on Plaintiff, but also made Plaintiff  
23 anxious that his work would be affected in a negative manner due to the  
24 incessant calls to his cellular phone.  
25  
26  
27  
28

1 20. As a result of Defendant's conduct, Plaintiff has sustained actual damages  
2 including, but not limited to, emotional and mental pain and anguish.  
3

4 **COUNT I**

5 **Defendant's Violations of the TCPA, 47 U.S.C. § 227**

6 21. Plaintiff incorporates by reference all of the above paragraphs of this  
7 Complaint as though fully stated herein.  
8

9 22. Defendant violated the TCPA. Defendant's violations include, but are not  
10 limited to, the following:

11 a) within four years prior to the filing of this action and on multiple  
12 occasions, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii), which  
13 states in pertinent part that  
14

15 [i]t shall be unlawful for any person within the United States . . . to  
16 make any call (other than a call made for emergency purposes or  
17 made with the prior express consent of the called party) using any  
18 automatic telephone dialing system or an artificial or prerecorded  
19 voice . . . to any telephone number assigned to a . . . cellular  
20 telephone service . . . , or any service for which the called party is  
21 charged for the call . . . .

22 b) Within four years prior to the filing of this action and on multiple  
23 occasions, Defendant willfully and/or knowingly contacted Plaintiff on  
24 his cellular telephone using an artificial prerecorded voice or an  
25 automatic telephone dialing system. Consequently, Defendant  
26 knowingly and/or willfully violated the TCPA.  
27  
28

1 23. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled  
2 to a statutory damage award in the amount of five hundred dollars (\$500.00)  
3 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).  
4

5 24. If the Court finds that Defendant knowingly and/or willfully violated the  
6 TCPA, Plaintiff is entitled to a statutory damages award of one thousand five  
7 hundred dollars (\$1,500.00) for each and every violation, pursuant to 47  
8 U.S.C. § 227(b)(3)(B), (C).  
9

## 10 **COUNT II**

### 11 **Defendant's Invasion of Privacy** 12 **(Intrusion upon Seclusion)**

13 25. Plaintiff incorporates herein by reference all of the above paragraphs of this  
14 complaint as though fully set forth herein at length.  
15

16 26. Defendant violated Plaintiff's privacy. Defendant's violations include, but are  
17 not limited to, the following:  
18

19 a. Defendant intentionally intruded, physically or otherwise, upon  
20 Plaintiff's solitude and seclusion by engaging in harassing phone calls  
21 in an attempt to collect on the alleged debt, despite Plaintiff's request  
22 for the calls to cease.  
23

24 27. Defendant's conduct would be highly offensive to a reasonable person.

25 28. Defendant's acts, as described above, were done intentionally with the purpose  
26 of coercing Plaintiff to pay the alleged debt.  
27  
28

1 29. As a result of Defendant's violations of Plaintiff's privacy, Defendant is liable  
2 to Plaintiff for actual damages. If the Court finds that the conduct is found to  
3 be egregious, Plaintiff may be entitled to recover punitive damages.  
4

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff Henry Holmes respectfully requests that judgment  
7 be entered against Defendant for the following:  
8

- 9 A. Declaratory judgment that Defendant violated the TCPA;  
10 B. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B), (C);  
11 C. Actual and punitive damages resulting from the intrusion of privacy;  
12 D. Awarding Plaintiff any pre-judgment and post-judgment interest as  
13 may be allowed under the law; and  
14  
15 E. Any other relief that this Honorable Court deems appropriate.  
16

17 **DEMAND FOR JURY TRIAL**

18 Pursuant to the Federal Rule of Civil Procedure 38, Plaintiff hereby demands  
19 a trial by jury of all issues triable by jury.  
20

21  
22 RESPECTFULLY SUBMITTED,

23 DATED: April 28, 2021

24 By: /s/ Steven A. Alpert  
25 Steven A. Alpert, NV #8353  
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